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8 JANUARY NICOLE VILLAREAL,
9 Plaintiff,
10 v.
11 CITY OF SAN JOSE, et al.,
12 Defendants.

Case No. [22-cv-09152-VKD](#)

**ORDER RE DISCOVERY DISPUTE RE
ACCESS TO PLAINTIFF'S
CONFIDENTIAL MEDICAL
RECORDS**

Re: Dkt. Nos. 38, 45

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14 The Court has considered the parties' further submission regarding their dispute
15 concerning whether a single page from plaintiffs' confidential medical records may be disclosed to
16 defendant Dominguez's criminal defense attorney for possible use in a separate criminal case
17 against him. Dkt. No. 45. The Court finds this matter suitable for resolution without oral
18 argument. Civil L.R. 7-1(b).

19 As explained in the Court's prior order, plaintiff January Villareal alleges that defendant
20 Dominguez physically and sexually assaulted her following her arrest on December 16, 2021 on
21 suspicion of driving under the influence of alcohol. *See* Dkt. No. 38 at 1. Ms. Villareal produced
22 her medical records to defendants on the condition that the records "shall only be used for
23 purposes of this action, and shall only be viewable by counsel of record in this [a]ction and any
24 experts retained by any party to this action." Dkt. No. 33 at 2; *see also* Dkt. No. 38 at 1. The
25 parties' dispute concerns one page (labeled CSJ1848) that describes a phone call Ms. Villareal
26 placed to an advice nurse at Kaiser Permanente on December 17, 2021, and which refers to events
27 and symptoms she experienced the day before, on December 16, 2021, the date of her arrest. Dkt.
28 No. 45 at 2, 3. Defendants ask the Court to de-designate this page of the medical records so that

1 the page is no longer subject to the protective order and may be freely shared with defendant
2 Dominguez's criminal defense attorney for possible use in his defense in a separate criminal action
3 where he is charged with having committed sexual battery against Ms. Villareal. *Id.* at 4.
4 Alternatively, defendants request permission to disclose this page to defendant Dominguez's
5 criminal defense attorney, in confidence, so that defense counsel can determine whether the page
6 contains exculpatory evidence and, if appropriate, assist defendants in presenting further argument
7 regarding the need for its use and disclosure in Mr. Dominguez's criminal case. *Id.* Ms. Villareal
8 opposes both of these requests. *Id.* at 2.

9 Rule 26(c) of the Federal Rules of Civil Procedure governs protection of discovery
10 materials. That rule permits a court to issue an order protecting a party or person from
11 "annoyance, embarrassment, oppression, or undue burden or expense" upon a showing a good
12 cause for such protection by the party producing discovery. Fed. R. Civ. P. 26(c). "A party
13 asserting good cause bears the burden, for each particular document it seeks to protect, of showing
14 that specific prejudice or harm will result if no protective order is granted." *Foltz v. State Farm
Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003). If such a showing is made, the court
15 must balance the interests of the public or other entities against the interests of the private litigants
16 to decide whether a protective order is warranted. *In re Roman Catholic Archbishop of Portland
in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011). As the party seeking protection from disclosure,
17 Ms. Villareal bears the burden of establishing good cause. This is true even where, as here, the
18 parties have stipulated to a protective order. *Id.* ("When the protective order was a stipulated order
19 and no party ha[s] made a good cause showing, then the burden of proof . . . remain[s] with the
20 party seeking protection.") (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307
21 F.3d 1206, 1211 n.1 (9th Cir. 2002) (internal quotes omitted)).

22 Ms. Villareal has shown that she is likely to suffer particularized harm if page CSJ1848 of
23 her medical records is publicly disclosed. *See* Dkt. No. 45 at 2. However, she has not shown that
24 she is likely to suffer particularized harm if the page is disclosed in confidence to defendant
25 Dominguez's criminal defense counsel for the limited purpose of assessing whether the page
26 contains exculpatory evidence for purposes of Mr. Dominguez's criminal defense, and, if
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United States District Court
Northern District of California

1 appropriate, assisting defendants in presenting further argument to this Court regarding the need
2 for its use or disclosure in Mr. Dominguez's criminal case. Mr. Dominguez clearly has an interest
3 in identifying potentially exculpatory evidence, and the criminal action against Mr. Dominguez
4 certainly involves issues important to the public. *See In re Roman Catholic Archbishop*, 661 F.3d
5 at 424; *see also O'Neil v. City & Cnty. of San Francisco*, No. 17-CV-07190-JCS, 2021 WL
6 1736809, at *4 (N.D. Cal. May 3, 2021) (considering impact of disclosure of confidential
7 documents produced in civil action on interests of parties in criminal case).

8 Accordingly, the Court orders as follows:

9 Defendants may disclose page CSJ1848 of Ms. Villareal's medical records to defendant
10 Dominguez's criminal defense attorney once that attorney signs an agreement to be bound the
11 protective order in this action, and further agrees to comply with the requirement that he maintain
12 the page in confidence and not use or disclose it for any purpose other than to (1) assess whether
13 the page contains exculpatory evidence for purposes of Mr. Dominguez's criminal defense, and
14 (2) if appropriate, assist defendants in presenting further argument to this Court regarding the need
15 for use or disclosure of the page in Mr. Dominguez's criminal case.

16 **IT IS SO ORDERED.**

17 Dated: January 22, 2024

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21 Virginia K. DeMarchi
22 United States Magistrate Judge
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